

STATE OF MICHIGAN
COURT OF APPEALS

GARY HORNFISCHER,

Plaintiff-Appellant,

v

SUBURBAN SOFTBALL, assumed name for
HAMLIN SOFTBALL, INC.,

Defendant-Appellee.

UNPUBLISHED

June 4, 1999

No. 205765

Oakland Circuit Court

LC No. 96-516548 NO

Before: Hood, P.J., and Holbrook, Jr., and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition and from an order setting aside plaintiff's default against defendant. We affirm.

On June 8, 1995, plaintiff injured his knee during a softball game while sliding into second base. Prior to the softball season, plaintiff had signed a document entitled "Suburban Softball Team Roster," which contained language releasing defendant from all liability for any injury on the premises:

In consideration of permission to play softball at Suburban Softball, each of the undersigned players hereby releases Suburban Softball, the league, Dickson & Co., P.C., Hamlin Softball, and J & A Management, its agents, officers, and employees, of and from any and all liability arising out of, or related to any loss, damage, or injury to person or property that may be sustained by any or each of the undersigned, while in, and or upon the premises.

Two months after plaintiff's summons and complaint were served on defendant's general manager, a default judgment was entered against defendant for failure to answer. Sixteen days thereafter defendant moved to set aside the default. The motion was granted. Additionally, the court granted defendant's motion for summary disposition based on the previously cited release.

This Court reviews a trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary

disposition is properly granted when the claim is barred because of release. MCR 2.116(C)(7). For the purposes of MCR 2.116(C)(7) motions, this Court considers all of the parties' documentary evidence, accepts the plaintiff's well-pleaded allegations as true, and grants the motion if no factual development could provide a basis for recovery. *Skotak v Vic Tanny Int'l, Inc*, 203 Mich App 616, 617; 513 NW2d 428 (1994).

Plaintiff first argues that the release in this case is invalid because it was misrepresented as a sign-up sheet. In order to render a release invalid, the defendant or its agent must have intentionally or fraudulently misrepresented the nature of the document. *Dombrowski v City of Omer*, 199 Mich App 705, 713; 502 NW2d 707 (1993). Since the person allegedly misrepresenting the document as being a sign-up sheet was not an agent of defendant, plaintiff can only succeed by a showing that the form itself evidences an intent on defendant's part to mislead or deceive the signers. *Id.* at 712-713.

Releases are not rendered invalid by the fact that all participants sign the same waiver. The issue in such a case is whether the nature of the form was sufficiently obvious to infer an intent to deceive. *Id.* While the title of the form in this case did not alert signers that it was a contract of release, neither did it contain hidden language that could be interpreted as an intent to mislead or deceive. Had plaintiff taken the necessary time and care to read three short lines of type, he could not possibly have been misled.

Plaintiff argues that, even if the release is valid, public policy considerations require that releases be limited to those injuries that are inherent in whatever activity is involved on the premises, and no release should extend to defective premises. We find no basis for such an argument in case law. In Michigan, parties are permitted to contract for release from *all* premises liability, which this Court has held "leaves no room for exceptions." *Skotak, supra* at 619. The release at issue here is broadly worded so as to release defendant from all liability for all injuries that occur on the premises.

Next, plaintiff argues that the trial court erred in setting aside the default that had been entered against defendant. A decision to set aside a default is within the sound discretion of the trial court, and this Court will not reverse absent a clear abuse of discretion. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996) (Fitzgerald, J.).

While Michigan's policy generally favors issues being determined on their merits, the general rule is that a motion to set aside a default may only be granted if good cause is shown and an affidavit is filed showing a meritorious defense. *Huggins v MIC Gen Ins Corp*, 228 Mich App 84, 87; 578 NW2d 326 (1998). "Good cause . . . includes: (1) a substantial defect or irregularity in the proceeding on which the default was based, (2) a reasonable excuse for failure to comply with requirements that created the default, or (3) some other reason showing that manifest injustice would result if the default were allowed to stand." *Id.*

This Court has previously held that a trial court does not abuse its discretion by setting aside a default when there is a "showing of a meritorious defense and factual issues for trial." *Id.*

Here, defendant had a meritorious defense and, under the circumstances of this case, we do not believe that the trial court abused its discretion in setting aside the default.

Affirmed.

/s/ Harold Hood

/s/ Donald E. Holbrook, Jr.

/s/ William C. Whitbeck